

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO DISQUALIFY**

Plaintiff, Michael C. Trimarco, by counsel, respectfully submits this Memorandum in Opposition to Defendant, Michael T. Farley’s (“Farley”),¹ motion to disqualify and/or objection to motion for *pro hac* admission. [ECF No. 17].

1. Plaintiff is a graduate of Cornell and the Harvard Business School. He is a father of three, WTC 9/11 survivor, responder, successful entrepreneur and businessman. This action arises out of multiple false and defamatory statements published by Defendant Farley between March and October 2020 about Plaintiff. Farley's statements evince an animosity, hatred, spite and ill-will for Plaintiff that is rarely seen, let alone expressed in letters to third-parties. [ECF No. 1 ("Compl., ¶¶ 1, 2)].

2. Farley's personal feelings for Plaintiff have bled over to Plaintiff's counsel of choice, Steven S. Biss.

¹ Mr. Farley is an attorney, but he is acting *pro se* in this action. His motion to disqualify employs the word “we” in several places, but it is solely filed by him.

3. Mr. Biss is an active member in good standing of Virginia State Bar. He is admitted to practice before the Virginia Supreme Court and all State trial courts in the Commonwealth of Virginia, the United States District Court for the Eastern District of Virginia, the United States District Court for the Western District of Virginia, the United States Bankruptcy Court for the Eastern District of Virginia, the United States Bankruptcy Court for the Western District of Virginia, the United States Court of Appeals for the Fourth Circuit, and several other Courts in the United States.

4. Mr. Biss has applied for admission to appear *pro hac vice* in numerous cases, including *Kesner v. Dow Jones & Company*, Case 1:20-cv-03454 (S.D.N.Y.) (pending), *DJ Lincoln Enterprises, Inc. v. Google*, Case 2:20-cv-14158 (S.D. Fla.) (pending), *NuStar Farms v. Lizza*, Case 5:20-cv-04003 (N.D. Iowa) (pending), *Harvey v. CNN*, 1:20-cv-03068 (D. Md.) (pending), *Nunes v. Washington Post*, 1:20-cv-01403 (D. D.C.), *Nunes v. CNN*, Case 1:20-cv-03976 (S.D.N.Y.), and others. All applications were granted. Mr. Biss has never been denied admission to appear and practice in any Court.

5. Mr. Biss graduated from Princeton University in 1987 with Honors and numerous academic awards. He is sole practitioner with an office in Charlottesville, Virginia. Prior to establishing his own firm in 2000, he was a partner in the law firm, Maloney, Huennekens, Parks, Gecker & Parsons, in Richmond, Virginia. Mr. Biss is an experienced trial lawyer, with a national practice focused on defamation, libel, slander, complex business and tort litigation. Over the course of his 29+ year career, he has successfully litigated to verdict/judgment hundreds of cases involving the kinds of claims, disputes and legal issues involved in this proceeding. A copy of his current resume is attached hereto as Exhibit "A".

6. In 2009, Mr. Biss was temporarily suspended from the practice of law in Virginia. He vouched for the representations of a client, whom he did not know well, and the representations turned out to be inaccurate. He acknowledged the error and accepted a suspension. In 2009, while his license was suspended, he assisted a client with an insurance claim, which he learned he was not permitted to do. His license was suspended for an additional month as a result. In 2010, Mr. Biss agreed to a public reprimand in order to resolve a disputed allegation of a conflict of interest made by an opposing party against whom Mr. Biss had obtained a \$1,100,000 jury verdict. Mr. Biss' license was fully restored in 2010, and it has been active and in good standing in all jurisdictions since.

7. The motion to disqualify should be denied for the following reasons:

a. Pursuant to Local Rule 83.5, Mr. Biss certifies (1) that he is eligible for admission to this Court, (2) that he is admitted, practicing and an active member in good standing of the Virginia State Bar and the United States District Court for the Eastern District of Virginia, (3) that he has been admitted *pro hac vice* and is lead counsel in defamation cases currently pending in Florida, Iowa, Maryland, New York and the District of Columbia, and he has never been denied admission to practice in any Court, and (4) that pursuant to Local Rule 83.6, he submits to the disciplinary jurisdiction of this Court for any alleged misconduct which occurs in the preparation or course of this action. Mr. Biss has reviewed and is familiar with this Court's Local Rules.

b. Ryan M. Ernst, Esquire, a member of the Bar of this Court, respectfully moves for the admission *pro hac vice* of Mr. Biss, and will serve as Delaware counsel in this action.

c. In almost 30 years of successful practice and representation of hundreds of clients in contentious actions, this is the first time a party or opposing counsel has ever opposed a motion to admit Mr. Biss *pro hac vice*. Mr. Biss is regularly commended by Federal and State Courts for his performance. He has obtained multiple million dollar verdicts and judgments for clients. Mr. Biss does not have a reputation for filing “frivolous lawsuits”² or incivility.

d. Plaintiff’s Complaint in this case states claims of defamation, false light and civil conspiracy upon which relief can be granted. Plaintiff’s claims are anything but frivolous. Indeed, Mr. Farley appeared and filed an answer. It is regrettable that Mr. Farley has chosen to personally attack Mr. Biss and cast aspersions on his character and competence as an attorney. Mr. Biss denies the false claims.³ No purpose would be served by engaging with Mr. Farley or debating the matter.

² Mr. Farley claims that Mr. Biss filed a “frivolous lawsuit” over an “imaginary cow”. [Mot., pp. 6, 18]. This is not true. The lawsuit in question is *Nunes v. Twitter*, Case CL19-1715 (Henrico County Virginia) (pending). Far from being a frivolous lawsuit, Mr. Biss successfully defeated the defendants’ motions to dismiss for lack of personal jurisdiction and venue. A copy of the Court’s Letter Opinion is attached as Exhibit “B”. Mr. Farley’s motion to disqualify is built, in large part, on articles he found on the Internet written by third-parties. [See, e.g., Mot., p. 6 fn. 4, 9, 19]. While there was a question raised in 2004 in the Illinois case concerning the scope of Mr. Biss’ representation of certain clients, the Court did not sanction Mr. Biss or refer the matter to any Bar, and the issue was resolved. Mr. Farley suggests that the Illinois action was also “wholly meritless”, but a review of the record demonstrates that the District Court **denied** in part defendants’ motion to dismiss. *Ray v. Citigroup*, 2003 WL 22757761 (N.D. Ill. 2003).

³ In footnote 5 of his motion, Mr. Farley alleges that “[w]e respectfully note that Biss filed post-judgment litigation against the defendants.” This is not true. On behalf of his client, Mr. Biss pursued an appeal to the Fourth Circuit Court of Appeals. That Appeal is pending.

CONCLUSION

This is a complex case and it will no doubt be contentious. There is no place in this or any other case for insults or aspersions. Mr. Biss is eminently qualified to litigate and try this case. He is Plaintiff's counsel of choice. Motions to disqualify the lead attorney in any case are gravely subject to abuse. Litigation tactics motivated by a desire to cause great hardship to a party should not be countenanced.

Plaintiff respectfully requests the Court to deny Defendant Farley's motion and to grant Plaintiff's motion for the admission of Mr. Biss *pro hac vice*.

DATED: March 10, 2021

MICHAEL C. TRIMARCO

By: /s/ Ryan M. Ernst
Ryan M. Ernst (No. 4788)
Bielli & Klauder, LLC
1204 N. King Street
Wilmington, DE 19801
Main: (302) 803-4600
Direct: (302) 321-5411
Fax: (302) 397-2557
rernst@bk-legal.com

Steven S. Biss (Virginia State Bar # 32972)
300 West Main Street, Suite 102
Charlottesville, Virginia 22903
Telephone: (804) 501-8272
Facsimile: (202) 318-4098
Email: stevenbiss@earthlink.net
(Motion for Admission Pro Hac Vice Filed)

Counsel for the Plaintiff

IN THE DISTRICT COURT FOR THE DISTRICT OF DELAWARE

MICHAEL C. TRIMARCO)
Plaintiff,)
v.) C.A. No. 1:20-cv-01408-RGA
MICHAEL T. FARLEY, SHAWN)
PATRICK CARDEN, MICHAEL A)
HILMER, CHRIS CICOLINI, and)
ASHISH KAPOOR)
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2021 a copy of the foregoing *Plaintiff's Memorandum in Opposition to Defendant's Motion to Disqualify* was filed electronically using the Court's CM/ECF system, which will send notice of electronic filing to the Defendants and all interested parties receiving notices via CM/ECF. I also hereby certify and attest that I have served a true and correct copy of the foregoing filing upon the counsel listed below via email:

Chris Cicolini
6886 Woodrise Rd
New Market, MD 21774

Michael T. Farley
One Courthouse Square
Newport, RI 02840

BIELLI & KLAUDER, LLC

Dated: March 10, 2021

/s/ Ryan E. Ernst
Ryan M. Ernst (No. 4788)
1204 N. King Street
Wilmington, DE 19801
Main: (302) 803-4600
Direct: (302) 321-5411
Fax: (302) 397-2557
Email: rernst@bk-legal.com

Counsel for the Plaintiff